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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT SEATTLE

10                  JONATHAN CARROLL,

CASE NO. C22-5368JLR

11                  Plaintiff,

ORDER ON MOTION TO  
APPOINT COUNSEL

12                  v.

13                  JOE BIDEN,

14                  Defendant.

15                  Before the court is *pro se* Plaintiff Jonathan Carroll’s motion for appointment of  
16 counsel. (Mot. (Dkt. # 2).) Mr. Carroll brings a Racketeer Influenced and Corrupt  
17 Organizations Act (“RICO”) claim against President Joe Biden for unspecified  
18 “environmental violations.” (*See* Compl. (Dkt. # 1) at 3.) Having considered the motion,  
19 the relevant portions of the record, and the applicable law, the court DENIES Mr.  
20 Carroll’s motion.

21                  The appointment of counsel for a *pro se* litigant in a civil case “is a privilege and  
22 not a right.” *United States ex rel. Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965).

1 A court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C.  
 2 § 1915(e)(1) but should do so “only in exceptional circumstances.” *Palmer v. Valdez*,  
 3 560 F.3d 965, 970 (9th Cir. 2009). When determining whether exceptional circumstances  
 4 justify the appointment of counsel, the court considers “the likelihood of success on the  
 5 merits and the ability of the petitioner to articulate his claims *pro se* in light of the  
 6 complexity of the legal issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331  
 7 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). Neither  
 8 of these considerations is dispositive; instead, they must be viewed together. *Id.*

9 Mr. Carroll’s form motion contains few supplemental details. (*See Mot.*) It  
 10 establishes only that he has not been granted permission to proceed *in forma pauperis*  
 11 (“IFP);<sup>1</sup> that his efforts to secure his own counsel have included searching online and  
 12 contacting “10 or so” attorneys “over the last 30 days”; and that no state or federal  
 13 agency has determined that there is reasonable cause to believe the allegations in his  
 14 complaint are true. (*See Mot.* at 1-3.) Thus, the court cannot conclude from Mr.  
 15 Carroll’s motion that he is “unable to afford counsel,” which is reason enough to deny his  
 16 motion. *See* 28 U.S.C. § 1915(e)(1). Mr. Carroll also neglects to state why his claim is  
 17 likely to succeed, though it is clear from the court’s preliminary review of the complaint  
 18 that success is not likely. (*See generally* Compl.) The court reaches this finding because  
 19 Mr. Carroll sues the President under RICO for unspecified environmental violations  
 20 committed “through actions/inaction of various Government agencies” (*see id.* at 5), and

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22 <sup>1</sup> Mr. Carroll has not sought to proceed IFP. (*See generally* Dkt.)

1 such claims are unlikely to succeed, *see, e.g.*, *Heckman v. State of Wash.*, No. C04-  
2 5447RJB, 2005 WL 1719869, at \*8 (W.D. Wash. July 25, 2005) (“[S]overeign immunity  
3 bars a RICO claim against the United States.”), *aff’d sub nom. Heckman v. Washington*,  
4 180 F. App’x 696 (9th Cir. 2006); *McMillan v. Dep’t of Interior*, 907 F. Supp. 322, 326  
5 (D. Nev. 1995) (“No RICO statute waives the sovereign immunity of the United States or  
6 its agencies.”), *aff’d sub nom. McMillan v. U.S. Dep’t of Interior*, 87 F.3d 1320 (9th Cir.  
7 1996). Because Mr. Carroll has not demonstrated that he is unable to afford counsel or  
8 that his complaint is likely to succeed on its merits, the court must conclude that  
9 exceptional circumstances do not warrant the appointment of counsel. *See Wilborn*, 789  
10 F.2d at 1331.

11 Finally, the court doubts that it will be able to find an attorney to take Mr.  
12 Carroll’s case. Although the court can, in certain circumstances, request that an attorney  
13 represent a *pro se* litigant, it cannot force a lawyer to take a case. *See* 28 U.S.C.  
14 § 1915(e); *see also Mallard v. U.S. Dist. Ct. for S. Dist. of Iowa*, 490 U.S. 296, 307  
15 (1989) (noting that courts may “ask but not compel lawyers to represent indigent  
16 litigants”). The court has adopted a plan for recruiting counsel to represent indigent  
17 litigants pro bono, but only plaintiffs in “civil rights actions” are eligible. *See* W.D.  
18 Wash. General Order 16-20 (Dec. 8, 2020), <https://www.wawd.uscourts.gov/sites/wawd/files/GO16-20AmendedProBonoPlan.pdf>. An action to establish the  
19 President’s RICO liability for unspecified environmental violations likely does not  
20 qualify as a civil rights action. Even if it did, Mr. Carroll reports that he has contacted  
21 approximately ten attorneys over the past month or so, none of whom was willing to take  
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1 his case. (See Mot. at 2.) Thus, the court doubts that an attorney would volunteer to take  
2 Mr. Carroll's case for free.

3 In sum, Mr. Carroll has not demonstrated that this case involves the type of  
4 exceptional circumstances that warrant appointment of counsel by the court. For the  
5 same reason, the court determines that Mr. Carroll's request for court-appointed counsel  
6 should not be passed on to the pro bono screening committee for further review. *See*  
7 W.D. Wash. General Order No. 16-20, Section 3(c). Accordingly, the court DENIES Mr.  
8 Carroll's motion for appointment of counsel (Dkt. # 2).

9 Dated this 3rd day of June, 2022.

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JAMES L. ROBART  
United States District Judge